

June 2000
The Responsible Party

In the remediation of contaminated property, the common term used to refer to the person assigned the duty of the cleanup is the “responsible party”. The term is so common that it is unlikely that many who fall under its terms really spend much time thinking about what it means. At the most basic level, it means that the property owner is legally responsible for accomplishing the remediation of the property. From a practical level, it means that the owner is the key individual for funding, organizing and completing the cleanup of the contaminated property.

Although there is a clear assignment of duty, the remediation of petroleum contaminated properties tends to take a different track. As has been noted a number of times in the past, there is a clear need for the owner to actually take responsibility for the remediation of their property. Owner responsibility was also emphasized in the biennial budget bill when the claimant’s share of interest costs and the deductible were increased. Both changes were aimed at enlisting the claimant’s active involvement in efforts to control costs and to use the flexible closure options that have been created by the Department of Natural Resources.

Although efforts have been made to get owner involvement in their remediation, we are frequently reminded that we still have a ways to go. Earlier this week, we received a question from a consultant regarding the implication of a waiver of deductible on a property that was part of an estate. The question was valid and did have implications for settling the estate. So where is the problem? The concern is that the representative of the estate was not part of the process of presenting the question or hearing the answer. The consultant may carry the answer back with total accuracy, or it may be summarized and abridged. It could also be mis-reported if what was said was not “heard” or if the original question was not clearly understood by PECFA.

Within PECFA, we continue to be troubled by consultants carrying out actions that should be the responsibility of the claimant or at least have direct claimant involvement. Some of these actions are in violation of Comm 47 (the consultant obtaining “consultant proposals” for owners) and others are poor process or bad business. These include the consultant independently registering tank systems, “facilitating loan applications” or developing tax information for a waiver of deductible request. Of most current concern, is the dramatic increase in the requests for the waiver of the program deductible (conversion of the deductible from a cash requirement to a lien against the property).

The increase in requests for waivers predates the statutory change in interest reimbursement and deductibles and almost universally tends to involve elderly individuals. Having older citizens, who are on fixed or limited incomes, applying for a waiver of deductible for their remediation is not unexpected. Unfortunately, with the owner totally absent from the process, questions arise on the extent to which they are aware of and understand the implications of the waiver. In some instances we have had to follow up on requests to try to determine whether the owner was truly aware of the request and what it would mean to them.

Certainly, the consultant has a role in the waiver and other remediation issues but they should not be taking on the role of the claimant/owner. This potential problem can be avoided by the

claimant taking a more active role in all requests, questions or decisions in the remediation. This can be done by the responsible party asking the question, completing the forms or at least working with and participating in the process (there is no reason that an owner can not participate in a conference call when a question is being posed). Actions of this nature may not only help the claimant take responsibility for their remediation, it may also help PECFA develop a confidence level that the claimant is aware of and understands issues like the request for a waiver of deductible.